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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 9, 2016

10:02 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Conference, on the Record, Regarding Ms. Nora's  
Discovery Conference Request.

Transcribed by: Penina Wolicki  
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A P P E A R A N C E S : (TELEPHONICALLY)

MORRISON & FOERSTER LLP

Attorneys for The ResCap Borrower Claims Trust  
250 West 55th Street  
New York, NY 10019

BY: ERICA J. RICHARDS, ESQ.

ACCESS LEGAL SERVICES

Attorneys for Richard Rode  
310 Fourth Avenue South  
Suite 5010  
Minneapolis, MN 55415

BY: WENDY ALISON NORA, ESQ.

ALSO PRESENT:

Richard Rode, Claimant

RESIDENTIAL CAPITAL, LLC, ET AL.

4

1 P R O C E E D I N G S

2 THE COURT: All right, this is Judge Glenn. We're on  
3 the record in Residential Capital, number 12-12020. This is a  
4 conference on the record regarding a discovery dispute  
5 concerning the contested claims of Richard Rode.

6 Who's on the phone, please, for the claimant, first.

7 MS. NORA: Wendy Alison Nora, Your Honor, and Richard  
8 Rode is participating telephonically.

9 THE COURT: Thank you. And for the Trust?

10 MS. RICHARDS: Good morning, Your Honor. Erica  
11 Richards of Morrison & Foerster on behalf of the ResCap  
12 Borrower Claims Trust.

13 THE COURT: All right. This telephone conference was  
14 scheduled after the Court received the March 4, 2016 letter  
15 from Ms. Nora. It states her position.

16 Ms. Richards, what's the Trust's position?

17 MS. RICHARDS: Your Honor, our position is  
18 straightforward. Mr. Rode, through his counsel, served  
19 extensive discovery requests on the Borrower Trust. A  
20 significant portion of those requests sought information  
21 regarding the process through which Mr. Rode's loan was  
22 securitized. We objected to those requests on a number of  
23 bases, including that they're irrelevant to the sole claim  
24 that's presently before the Court, which is whether the debtors  
25 breached Mr. Rode's October 2009 loan modification agreement.

1 As such, we believe the information Ms. Nora is  
2 seeking related to securitization is outside the scope of  
3 discovery that was authorized by this Court and that is  
4 permitted under Federal Rule of Procedure 29(b).

5 THE COURT: Anything else you want to say, Ms.  
6 Richards?

7 MS. RICHARDS: That's it, Your Honor.

8 THE COURT: Okay. Ms. Nora, the only claim that  
9 remains in this case is the breach of contract claim relating  
10 to a loan modification that Mr. Rode allegedly received. What  
11 does the securitization of Mr. Rode's loan have to do with the  
12 one remaining claim?

13 MS. NORA: Your Honor, this is not discovery that is  
14 directed toward the securitization for the purpose of exposing  
15 any flaws in the securitization process. It goes to the exact  
16 issue that the Court is allowing us to proceed on. It goes to  
17 Mr. Rode's damages. There are issues related to the process  
18 that Ms. Richards has characterized as a securitization process  
19 that we intend to show involve the payments that were made and  
20 taken by the ResCap debtors from Mr. Rode's documents that were  
21 paid to them and not credited to his account, which are a part  
22 of our claim for exemplary damages, which is proceeding before  
23 this Court for breach of contract.

24 THE COURT: Okay. Exemplary damages for breach of  
25 contract are not available in this action. The only matter

1 relevant and material to this action are the facts concerning  
2 the proposed loan modification, and assuming that that contract  
3 was breached, what Mr. Rode's damages are that are proximately  
4 caused by the breach.

5 The securitization of Mr. Rode's loan has absolutely  
6 nothing to do with that claim. Discovery with respect to  
7 securitization -- the objection to discovery with respect to  
8 securitization is sustained and will not be permitted.

9 What is -- tell me what your theory of damages are,  
10 Ms. Nora?

11 MS. NORA: The theory of damages comes from the  
12 amended petition filed by Mr. Rode's Texas counsel, which we  
13 believed was considered by this Court when the Court decided  
14 what issues Mr. Rode would be allowed to proceed upon.

15 Counsel for Mr. Rode, in the Texas amended the  
16 petition, which we believe was attached to Mr. Rode's proofs of  
17 claims, although we were unable to retrieve that from KCC LLC.  
18 But it was produced by the Borrower Claims Trust, so called, as  
19 an exhibit through the Liquidating Trust -- well, it's produced  
20 in discovery at Borrower Claims Trust Bates stamp numbers  
21 52620, and it also was attached to Kathy Priore's objection to  
22 the proofs of claim.

23 It provides for actual damages, exemplary damages, and  
24 treble damages, Your Honor.

25 THE COURT: Ms. --

1 MS. NORA: It was not my understanding in reviewing  
2 the Court's records -- the Court's decisions that exemplary  
3 damages had been excluded from the proofs. But he lost income.  
4 He lost income from his business, because he lost his credit as  
5 a result of being characterized as being in foreclosure.

6 He suffered worry, anguish, and interference with his  
7 business operations. He had to sell a rental property in order  
8 to be able to stay in business, because his ability to borrow  
9 from his local bank was terminated as a result of placing him  
10 in foreclosure. It's just the standard consequential damages  
11 from a breach. And then again this is the first time that I  
12 have been able to hear the Court say that exemplary damages,  
13 which are available for breach of contract, under Texas law,  
14 and which were in the amended petition, which was the basis of  
15 these claims, will not be considered by the Court.

16 THE COURT: Ms. Richards, are exemplary damages  
17 available for breach of contract under Texas state law?

18 MS. RICHARDS: Your Honor, I don't -- I don't know  
19 that I have that answer in front of me.

20 THE COURT: All right. You can brief that for trial.  
21 I'm not -- Ms. Nora, it wasn't my understanding that exemplary  
22 damages are available for breach of contract. If you believe  
23 they are, you'll have an opportunity to brief that for trial.  
24 The only claim that survives is one breach of contract claim  
25 under Texas law.

1 I'm not going to preclude what proof or theories  
2 supporting damages are available at this point. Just bear with  
3 me a second.

4 (Pause)

5 THE COURT: At pages 26 through 28 of the Court's  
6 opinion in this matter, it addresses the alleged breach of  
7 contract claim under the so-called October agreement. That is  
8 the claim that survives. Establishing that claim and any  
9 damages that flow from an alleged breach of that claim are all  
10 that survive.

11 The securitization has absolutely nothing to do with  
12 it. So I'm sustaining the Trust's objection to discovery that  
13 is addressed in Ms. Nora's letter of November 4th, 2016.

14 Ms. Richards have you put this matter on the calendar  
15 for -- have you put this matter on the calendar for the next  
16 omnibus hearing date?

17 MS. RICHARDS: Yes, Your Honor. It's actually  
18 scheduled for a case management conference tomorrow morning at  
19 the 10 a.m. omnibus hearing.

20 THE COURT: Okay. When we get off the phone, you and  
21 Ms. Nora should confer. And is this the only -- this discovery  
22 issue that's raised in her March 4th letter, is that the only  
23 remaining issue?

24 MS. NORA: Your Honor, I have to object to the  
25 characterization of the contents of my letter as being solely



1 securitization. We're asking for discovery of matters that  
2 should be in the debtors' books and records that don't even  
3 pertain to securitization to which we got the objection that  
4 the Borrower Claims Trust does not have access to books and  
5 records. And I asked for production of the cooperation  
6 agreement between the Liquidating Trust and the claims trust --

7 THE COURT: What does that have to do with the issue  
8 at trial -- that's coming to trial? I don't see what -- why  
9 that request is relevant or material to -- once again, Ms.  
10 Nora, in every matter that you raise before me, you take a  
11 detour and frolic into matters that have no bearing on the  
12 claims before the case. When and if a final judgment is  
13 entered with respect to Mr. Rode's claim, if you're unhappy  
14 with it, you'll appeal.

15 But we will proceed on the basis of this Court's  
16 written opinion that's already been entered. The Trust's  
17 objections to your discovery are sustained. The two of you  
18 should confer when the Court gets off the call. I expect to  
19 hear tomorrow what, if any, issues remain to be resolved.

20 Are you calling any expert witnesses, Ms. Nora?

21 MS. NORA: Yes, Your Honor. We are. And much of our  
22 discovery was directed toward information that we wanted to  
23 share with our experts.

24 THE COURT: Well, you're going to do the best you can,  
25 Ms. Nora. Your -- the discovery that you identify in your

1 letter, to the extent it's intelligible at all, is not relevant  
2 to the claims that remain in this case.

3 Ms. Richards, have you produced whatever documents the  
4 debtors or the Trust have that related to the issues that are  
5 in dispute?

6 MS. RICHARDS: We did not produce documents that were  
7 related to the requests that we objected to on the basis of  
8 relevance.

9 THE COURT: What have you produced?

10 MS. RICHARDS: We produced all of the books and  
11 records that the Liquidating Trust has related to Mr. Rode's  
12 loan, including the servicing notes, the payment history. We  
13 produced copies of correspondence to and from Mr. Rode related  
14 to the loan.

15 THE COURT: Okay. I expect to hear from both sides  
16 tomorrow with a precise proposed schedule to go forward. This  
17 case is going to be set for trial and the matter is going to be  
18 resolved.

19 I will hear the matter during the conference tomorrow.  
20 So with respect to the discovery issues raised in Ms. Nora's  
21 letter, the objection to that discovery is sustained. We're  
22 adjourned.

23 MS. NORA: Thank you, Your Honor.

24 MS. RICHARDS: Thank you, Your Honor.

25 (Whereupon these proceedings were concluded at 10:14 AM)

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I N D E X

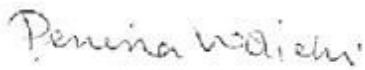
RULINGS

	PAGE	LINE
The objection to discovery with respect to	6	8
securitization is sustained and will not be		
permitted		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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PENINA WOLICKI

AAERT Certified Electronic Transcriber CET\*\*D-569

eScribers

700 West 192nd Street, Suite #607

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Date: March 10, 2016